IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 78 OF 1999

Lakhama Shrawan Phadawale ..... Appellant.

versus

The State of Maharashtra ..... Respondents.

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Shri D.G. Khamkar for the appellant.

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CORAM ; V.G.PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED; 8TH OCTOBER, 2004.

ORAL JUDGMENT (Per Palshikar, J.);

1. Being aggrieved by the the order of conviction passed by the 2nd Additional Sessions Judge, Thane in Sessions Case No. 252 of 1996 under sections 302, and 203 of IPC on 21-1-1999 the appellant has preferred this appeal on the grounds mentioned in the memo of appeal as also orally canvassed before us.

2. With the assistance of the learned counsel for the accused and the learned Prosecutor, we have scrutinised the records of the case and re-appreciated the evidence on record.

3. The prosecution story stated briefly is that the complaint was lodged by the accused himself in the police station that his wife has committed suicide by strangulation. The investigation was undertaken and during the course of investigation, police thought that the accused was involved in the commission of that offence, and therefore, the police prosecuted the accused and examined as many as eight witnesses to prove its case. The learned trial Judge on consideration of this evidence, came to the conclusion of guilt and convicted the accused as aforesaid. It is this order which is assailed before su on the ground of total lack of evidence. The learned A.P.P. tried to defend the same by relying on the circumstantial evidence of recovery of articles.

4. P.w.1 Mahadev is the neighbouring witness who was called to the house of the accused when police were present and in presence of police, the accused told him that the victim i.e. his wife has committed suicide by strangulation. He saw the dead body and also saw the rope lying there and scriebd his signature to the panchanama. He proved it as Exh.14. However he has been declared hostile as he denied that the recovery of rope at the instance of the accused was done in his presence.

5. P.w.2 Tulsi deposed about the quarrel between the accused and the victim and denied any further knowledge and was therefore declared hostile. Same is the case of P.w.3 Krishna, who is the brother of the victim, who speaks of previous quarrel but has no knowledge of the incident itself.

6. P.w.4 Govind is the witness to the recovery of rope from the loft in the house of the accused. However he denied to have effected such recovery. He was declared hostile. P.w.5 is Dr. Siddhik who proved the death by strangulation. P.w.6 Vithal is the Head Constable, who proved the spot panchanama where the rope used for strangulation, is shown as lying at the spot.

7. P.w.7 Anant is the Head constable who recorded the report of accidential death as lodged by the accused. P.w.8 is the investigating officer P.S.I. Shivaji who recorded the seizure of the rope from the loft in the house of the accused. The panch to this panchanama however has turned hostile.

8. It is in effect is the entire evidence on record. It is obvious from the evidence of P.w.5 the doctor that the victim met her death by strangulation. The

prosecution has attempted to see that the accused is proved to be guilty by fixing the recovery of rope from the loft because the rope which was seized from the spot was not, according to police, adequate to proper strangulation. Even if this recovery of rope is accepted as correct, merely because the rope was seized from the loft of the house of the accused and the death was caused by strangulation, there is no reason to believe, nor is there any evidence to prove that the accused was the person who strangulated the victim. Merely because there was previous quarrel, rushing to such conclusion will be an error of law, that is exactly what has been done by the learned trial Judge. We are unable to accept this finding. In our opinion, the learned trial Judge has erred in holding the guilty of murder against the accused as the entire evidence on record is based on the rope which was recovered from the loft of the house of the accused. The evidence, in our opinion, was grossly inadequate to warrant such conviction. In the result, the appeal succeeds and is allowed. The impugned order of the Learned trial Judge is set aside. The accused is acquitted of the offence with which he was charged. He be released immediately if not otherwise required.

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